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OREGON SCHOOL LAW DECLARED INVALID

The Oregon School Law, requiring every parent and guardian to send children between the ages of eight and sixteen to the public schools, has been held unconstitutional, by the United States District Court for Oregon, in the case of Society of the Sisters of the Holy Names, etc., v. Pierce et al. (not yet reported. Decision in April, 1924). This law has aroused considerable interest on account of the effect it would have on private and parochial schools. Indeed, the question decided by this case was the power of the Legislature to deprive private and parochial school organizations of the liberty and right to carry on their schools for teaching in the grammar grades.

As stated by the New York Law Journal, it had always—at least before the enactment of the Oregon law—been supposed that "the law does not interfere with the freedom of private instruction" (Freund on the Police Power, sec. 266). The notion of Plato that in a Utopia the state would be the sole repository of parental authority and duty and the children be surrendered to it for upbringing and education was long ago repudiated as impossible and impracticable. Heretofore it had not been doubted that the true rule of constitutional law in this respect, as well as the only sound theory, was, in substance, that announced by the court in State ex rel. Kelley v. Ferguson (95 Neb., 63, 73-4), namely:

"The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble institution to cause us to regard it as 'all in all' and destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and the education of his children. * * * The state is more and more taking hold of the private affairs of individuals and requiring that they conduct their business affairs honestly and with due regard for the public good. All this is commendable and must receive the sanction of every good citizen, but in this age of agitation, such as the world has never known before, we want to be careful lest we carry the doctrine of governmental paternalism too far, for, after all is said and done, the prime factor in our scheme of government is the American home."

Professor Freund has well stated in his work on the Police Power (sec. 266) that

"In one respect, at least, education must be constitutionally free, namely, in so far as it is essential to the freedom of religion; for the free exercise of religion implies teaching as well as worship. The state could certainly not prescribe the religious education of children in so far as it would thereby establish a religion or discriminate in favor of one; nor could it, suppress all private schools, since religious demoninations would thereby be prevented from inculcating their doctrines in the most effectual way.'

We quote a portion of the Court's opinion as follows:

"The court in the Meyer case (Meyer v. Nebraska), in stating some things that are without doubt included by the term 'liberty,' as guaranteed by the constitution, concludes: 'And generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.' And further on the court says (allusion to which has been previously made): 'Plaintiff in error taught this (German) language in school as part of his occupation. His right thus to teach and the right of parents to engage him so as to instruct their children, we think, are within the liberty of the amendment.'

"These declarations, although they

speak of the individual, are applicable here, notwithstanding complainants are bodies corporate. Their right and privilege to teach the grammar school grades, and the privilege of parents to employ them, are the same as though the individual were conducting a private school along the same lines. The mere fact that they bear corporate names afford no basis for distinguishing them from private schools, conducted by an individual or individuals, with a corps of teachers and instructors to carry on the school work. 'The established doctrine is,' continues the court, 'that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.'

"The melting pot idea applied to the common schools of the state, as an incentive for the adoption of the act, is an extravagance in simile. A careful analysis of the attendance of children of school age, foreign born and of foreign born parentage, at private schools, as compared with the whole attendance at schools, public and private, would undoubtedly show that the number is negligible, and the assimilation problem could afford no reasonable basis for the adoption of the measure. But if it be that the incentive is political, and arises out of war exigencies and conditions following thereupon, then the assimilation idea is pointedly answered by the opinion rendered in the Meyer case: 'The desire of the Legislature to foster a homogeneous people, with American ideals, prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war, and aversion toward every characteristic of truculent adversaries, were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error.'

"So it is here, in our opinion, the state, acting in its legislative capacity, has, in the means adopted, exceeded the limitations of its power—its purpose being to take utterly away from complainants their constitutional right and privilege to teach in the grammar grades, and has and will deprive them of their property without due process of law."

NOTES OF IMPORTANT DECISIONS

REGULATION OF THEATER TICKET BROKERS.—The Act of the New York Legislature (Laws 1922, Ch. 590) requiring persons engaged in the business of reselling tickets of admission to theaters and other places of amusement to procure licenses, and prohibiting them from reselling tickets for more than fifty cents above the regular price, has been held valid in the case of People v. Weller, 237 N. Y. 316, 143 N. E. 205.

Statutes and ordinances prohibiting the resale of theater tickets at an advance over the price printed on such tickets have been held unconstitutional in People v. Steele & Altschul, 231 Ill. 340, 83 N. E. 236; 14 L. R. A. (N. S.) 361, 121 Am. St. Rep. 321; City of Chicago v. Powers, 231 Ill. 560, 83 N. E. 240; Ex parte Quarg 149 Cal. 79, 84 Pac. 766, 5 L. R. A. (N. S.) 183, 117 Am. St. Rep. 115, 9 Ann. Cas. 747. All these decisions are to some extent based upon the view that in effect the purpose of the statute was to fix prices. See dissenting opinion in German Alliance Ins. Co. v. Lewis, 233 U. S. 389, at page 431, 34 Sup. Ct. 612, 626 (58 L. Ed. 1011, L. R. A. 1915C, 1189). In all these cases the reasoning of the court seems to rest upon two premises: First, that the business of conducting a place of amusement is essentially a private business and the Legislature has no more power to fix the prices that may be demanded or received in that business than it would have to regulate the price that may be demanded or received by a tailor, an artisan, or a merchant upon the sale of services or commodities. Second, that the business of reselling tickets of admission is a lawful business performing a useful service and that any person carrying on such business should be left free to contract for the performance of such service with any person who desires to avail himself of the service afforded by such business.

The New York court did not consider the first of these propositions, as the Act before it does not attempt to regulate the price of tickets sold by proprietors of places of amusement.

Relative to the question of liberty to contract, the court in part said:

"The same respect for individual liberty, which should ordinarily deter the Legislature from an attempt to restrict freedom, might under special circumstances impel the Legislature to seek a remedy for conditions which, unless controlled, will leave the patrons of the theater 'to the mercy of speculators.' The liberty of the individual citizens to contract freely should be jealously guarded even from encroachments by the state, and where barter is free and demand creates supply perhaps economic laws and not the fiat of the state is the proper corrective of exorbitant prices; but where the liberty of the individual citizen to contract freely has been restricted by the circumstance that a man or group of men has obtained control of the supply of a commodity which the public desires or commonly uses, and this control is used to compel the individual to pay any price which may be demanded though that price be far beyond the price which would be fixed by free contract between consumer and producer, a legislative mandate which regulates the exercise of the compulsive force may in effect restore and not diminish the liberty of the individual."

CONTRACT FOR SERVICES FOR ONE YEAR COMMENCING THE FOLLOWING DAY AS BEING WITHIN THE STATUTE OF FRAUDS.—The case of Dykema v. Story and Clark Piano Company, 220 Mich. 600, 190 N. W. 638, 27 A. L. R. 660, holds that an oral contract of employment for one year, the term of which might have commenced on the day following that on which the contract was made, is not within the statute of frauds, since it is capable of performance within one year. In this case the contract was made on October 21st, 1920, and the employee could have commenced performance of his contract on October 22nd. Had he done so he would have completed performance of the contract October 21st, 1921. This, the court held, would have been within a year from the day it was entered into.

According to a note in 27 A. L. R. 665, the rule is uniformly adhered to that such a contract is not within the statute. The English case of Cawthorne v. Cordrey, 13 C. B. N. S. 405, 143 English Reprint 161, holds in accordance with the rule above stated. So also is the case of Smith v. Goldcoast and A. Explorers (1903), 1 K. B. 285, 72 L. J. K. B. 235, 88 L. T. 202. The Smith case seems to be the latest English case on the subject.

The wording of the statute relative to these contracts relates to agreements that are not to be performed within one year *from* the making thereof. The word "from" would seem to indicate that the year in contemplation is one commencing on the day next following that on which the agreement is entered into. This accords with the rule that the law does not take notice of fractions of a day, and that in such instances the day on which the agreement is made is excluded. It is so held in Dickson v. Frisbee, 52 Ala. 165, 23 Am. Rep. 565.

There are some early New York cases, Levison v. Stix, 10 Daly 229; Jonap v. Preger, 59 Misc. 187, 110 N. Y. Supp. 483, 113 N. Y. Supp. 519, which hold that such a contract is within the statute of frauds, but the later cases in that state follow the rule that a contract for a year which begins on the day following that on which it is made is not within the statute of frauds. Prokop v. Bedford Waist & Dress Company, 187 App. Div. 662, 176 N. Y. Supp. 376; Landman v. Gerstner, 174 N. Y. Supp. 202

ZONING ORDINANCE HELD INVAILD.—A village zoning ordinance restricting the class of buildings which may be built within certain distances from designated streets, and which as affecting complainant's property, consisting of a considerable tract of unimproved land, would prevent the sale and use of a large part of it for legitimate purposes, to which it would normally, because of its location, be devoted, with consequent substantial depreciation of its market value, is held, in Ambler Realty Co. v. Euclid, 297 Fed. 307, by the District Court, N. D. Ohio, E. D., void as depriving complainant of its property without due process of law, in violation of the Fourteenth Amendment, as well as in violation of provisions of the State Constitution of Ohio.

We quote from the opinion of District Judge Westenhaver as follows:

"Nor, in my opinion, can it be doubted that the ordinance is void because its provisions are in violation of article 1, § 1, Constitution of Ohio, which provides, 'All men * * * have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property,' and of article 1, § 19, which provides, 'Private property shall ever be held inviolate,' and that, 'Where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money, and such compensation shall be assessed by a jury,' and also of section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides, 'Nor shall any state deprive any person of life, liberty, or property, without due process of law.' In reaching this conclusion, I assume that the village of Euclid, by virtue of article 18, § 3, of the Constitution of Ohio, and section 4366-7 to 4366-12, inclusive, General Code of Ohio, possesses all the

police power sought to be exercised which the Ohio Legislature might properly confer upon a municipality.

"The constitutional validity of an ordinance of this nature under the Ohio Constitution has not been expressly passed on by the State Supreme Court. Euclid-Doan Co. v. Cunningham, 97 Ohio St. 130, 119 N. E. 361, L. R. A. 1918D, 700, involves merely building code restrictions of the kind usually enacted to prohibit fire risks and hazards and always and everywhere held to be within the state police power. Ohio Co. v. Rendigs, 98 Ohio St. 257, 120 N. E. 836, involves merely the power to prohibit the maintenance in a residence district of a business which upon the facts as well as by common experience either is or may become a nuisance, and exercises only the well-known power to abate existing nuisances or to prevent the creation of nuisances in the future. In Pontiac Co. v. Commissioners, 104 Ohio St. 447, 135 N. E. 635, 23 A. L. R. 866, it was said that the imposition of restrictions by the exercise even of the power of eminent domain upon property contiguous to a public park, some of which restrictions were akin to those now in question, would be a taking of property not for public use, and would violate the provisions protecting the right of property, already cited, of the Ohio Constitution.

"The argument supporting this ordinance proceeds, it seems to me, both on a mistaken view of what is property and of what is police power. Property, generally speaking, defendant's counsel concede, is protected against a taking without compensation, by the guaranties of the Ohio and United States Constitution. But their view seems to be that so long as the owner remains clothed with the legal title thereto and is not ousted from the physical possession thereof, his property is not taken, no matter to what extent his right to use it is invaded or destroyed or its present or prospective value is depreciated. This is an erroneous view. The right to property, as used in the Constitution, has no such limited meaning. As has often been said is substance by the Supreme Court: 'There can be no conception of property aside from its control and use, and upon its use depends its value.' "

UNAUTHORIZED ACTS OF INFANT'S AGENT.—It has sometimes been said that all of the contracts of an infant are voidable except two: (1) the contract of an infant for necessaries, which is binding; (2) the contract for the appointment of an agent, which is void (Fetrow v. Wiseman, 40 Ind., 148, 155).

The early cases seem to incline to the conclusion that the appointment of an agent by an infant was a void act. Of course, if void, it could not be ratified by any subsequent act of the infant principal (Huffcut, Agency, pp. 56-58). Even in New York the early authorities made the sweeping statement that the appointment of an agent by an infant is a void act and that, therefore, all acts done by such agent in behalf of his infant principal are void (Bennett v. Davis, 6 Cow., N. Y., 393; Huffcut, Agency, 2d ed., p. 28). The later American cases, however, show a decided tendency to confine, if not indeed to avoid, this rule and to hold that the appointment of an agent by an infant is a voidable act rather than a void one (Patterson v. Lippincott, 57 N. J. L., 457).

This interesting question was recently passed upon and finally decided by the Court of Appeals in Casey v. Kastel et al. (237 N. Y., 305, 142 Northeastern Rep., 671). The lower court held (119 Misc., 116) that the act of an agent in appointing an agent for herself was totally void, and that the ratification consequently was not legally effective and that, therefore, anyone dealing with the property in reliance on the apparent authority or the ratification was a converter (119 Misc. Rep., 116, especially at p. 123).

The Court of Appeals held, however, that the appointment of an agent by an infant is not wholly void, but merely voidable, discarding the ancient rule as illogical and unsound, and quoting, among other authorities in support of its conclusion, Professor Williston (see Williston on Contracts, vol. I, p. 444 et seq.; 237 N. Y., 305, especially at p. 310). An interesting discussion of the law is found in the Cornell Law Quarterly (vol. IX, pp. 333-334, April, 1924).

The opinion of the Court of Appeals, written by Judge Pound, contains the following discussion of this important modification of the old rule:

"'The court below proceeded on the theory that it is the law of this state that an infant's appointment of an agent is void, and that it follows that an infant cannot, during minority, ratify the act of one who assumes to act as her agent. The rule is stated, but by way of dictum only, in Ely v. Ehle (3 N. Y., 506, 508), as follows:

" 'If an infant give or sell his goods and delivers them with his own hands, the act is voidable only; but if he give or sell goods, and the donee or vendee take them, by force of the gift or sale, the act is void, and the infant may bring trespass.'

"It is more definitely stated in Bool v. Mix (17 Wend., 119, 131; 31 Am. Dec., 285), as follows:

" 'The rule seems to be universal that all deeds or instruments under seal, executed by an infant, are voidable only, with the single

exception of those which delegate a naked authority, which are void. And even in relation to a power of attorney, Parker, C. J., considered it a point of strict law, somewhat incongruous with the general rules affecting the contracts of infants, and that no satisfactory reason could be assigned for the exception.'

"Williston on Contracts (vol. 1, p. 444) states the rule as follows:

"'It has been asserted often and decided sometimes that an infant's power of attorney or agreement to make another his agent is void; and especially a power or warrant of attorney by an infant for the confession of judgment against him has been held void, as has any authority given by the infant to an attorney to represent him in court. Probably courts would still hold an infant unable to authorize a confession of judgment or to appoint an attorney for judicial proceedings, but there seems no reason except the antiquity of the rulings to that effect which can support the broad proposition that an infant's power of attorney or appointment of an agent is void, and generally, in recent cases, courts have been disposed to treat the creation of an agency by an infant, like other agreements made by him, as merely voidable. A ratification by an infant of an act done on his behalf, but without his authority, stands logically on the same ground as an act originally authorized by an infant principal, and has been held binding.'

"Notwithstanding numerous general statements in the books, sound principles compel the conclusion that no satisfactory distinction can be drawn between a sale and delivery by the infant and a sale and delivery by an agent for him. The sale of the stock by Kastel was voidable only and not void. Dicta and general statements to the contrary are no longer respectable authority (Coursolle v. Weyerhauser, 69 Minn., 328, 332, 72 N. W., 697)."—N. Y. Law Journal.

POLICY EXCEPTING LIABILITY WHILE INSURED "RIDING A MOTORCYCLE" COVERS DEATH WHILE RIDING IN SIDE CAR.—An accident insurance policy providing that the company shall not be liable for "injuries received while riding a motorcycle," is held in Silverstein v. Commercial Casualty Ins. Co., 237 N. Y. 391, 143 N. E. 231, to cover death of insured while riding in a side car attached to a motorcycle. Said the Court:

"To 'ride,' used as a transitive verb, is annexed the idea of control or management. In standard dictionaries, among other definitions are found 'to manage or control while seated on'; 'to sit on and control so as to be carried, as to ride a horse, to ride a bicycle,' 'to control and manage.' When Marlborough rides the whirlwind, he is not swept helplessly along. He directs the storm. A baby in a basket attached to the handle bar does not ride the bicycle. A friend who tells you he has been riding a horse conveys the impression that he has done more than to rest passively on its back while the horse was led by another. You say to a child sitting on a horse which his father controls that he is riding. You flatter him by likening his adventure to that of his elders, as when his hand rests on the reins you tell him he is driving. The defendant itself seems to hesitate as to the proper meaning of the words. In the answer it quotes the clause and then alleges that the deceased was killed not while riding, but 'while riding in or upon motorcycle.'

"The insured, therefore, might fairly give this interpretation to the contract. The result in the courts below was erroneous. Especially is it so when in no sense did Silverstein mount the machine. He sat not on, but in the car. As no other defense is suggested, the verdict reached by the jury at Trial Term under direction of the judge should be reinstated and judgment granted to the plaintiff thereon, with cost in all courts."

AUTOMOBILE COLLISION INSURANCE.—The Supreme Court of the State of Washington, in Ploe v. International Indemnity Co., 223 Pac. 327, holds that where an automobile, in rounding the curve of a mountain road, skidded, left the road, and, when beyond control of the driver, proceeded some 25 feet, struck a stump approximately nine feet from the edge of the road, and there capsized and rolled to its destruction, the contact with the stump after it had left the road and was beyond the control of the driver was not a "collision" within the meaning of an insurance policy covering damage by being in "accidental collision * * * with another automobile, vehicle or object;" such clause meaning that damages, to be recoverable, must be the result of the collision, and the contact with the stump not being the proximate cause of the injuries sued for.

The court further held that the repeated contact of the automobile with the earth while rolling down the mountain side was not a "collision," within the meaning of the policy.

"Respondent relies upon Harris v. American Casualty Co., 83 N. J. Law, 641, 83 Atl. 194, 44 L. R. A. (N. S.) 70, Ann. Cas. 1914B, 846, and Universal Service Co. v. American Insurance Co., 213 Mich. 523, 181 N. W. 1007, 14 A. L. R. 183, both of which support his contentions, but we are convinced that the better reasoned cases constituting the weight of authority are to the contrary.

"It seems to us that the proximate cause of the accident here involved was the skidding of the car, or its passing from the roadway from whatever cause, and the instant it left the roadway and started uncontrolled down the mountain side its doom was sealed, and its destruction certain. Its subsequent contact with the stump was an incident which had, and could have, no effect upon the situation beyond hastening or delaying for an instant the final result. Therefore the words of the policy, 'this policy * * * covers * * * damage to the automobile * * * by being in accidental collision * * * with another automobile, vehicle or object' which clearly mean that the damages recoverable must be the result of such a collision, cannot by reasonable construction be made to include such a striking of the stump as is here shown. But it is argued that the damages were inflicted by a collision or collisions between the automobile and the earth, which it struck perhaps repeatedly in its descent of the hillside, and, there being no provision in the policy excluding damages caused by upset, we should hold these various contacts with the earth to be collisions within the meaning of the policy."

MOS' AGGERVATIN'

"Am dis Misto Gibbs, de lawyer what handles divo'ce cases?" inquired a buxom-looking colored woman, opening the door of an attorney's office.

"I handle some divorce cases," admitted the lawyer. "Do you want one?"

"Ah suttinly does. Mah name am Mrs. Mandy Purdin, an' Ah wants to sot mahse'f shet of dat good-fo'-nothin' husban' o' mine, Lysander Purdin.'

"What are the grounds?"

"Groun's? Says which, groun's?"

"What is your complaint against him? What has he done?"

"Complaints, Misto Gibbs, is somethin' Ah ain't got nothin' else but. An' dat lowlife he's done ever'thin'. But de lates' is dat he's up an' gone on' went an' insured his life fo' five thousan' dollars! Kin yo' imagine dat?"

"But, my good woman, his insuring himself is no ground for complaint."

"Tain't, huh? Looky here, suh. Dat man done tuk out all dat insurance when he ain't got no idea a-tall o' dying. He done it jes' to tant-lize me! Yassuh, jes' to tant-lize me!"—Inklings.

JUSTICE

By Dorr Kuizema

Justice is the principal interest of man on earth; so runs the phrase coined by an eminent jurist. Yet, is it? Justice is not an end in itself; it is a means unto an end or ends. It is something incidental to other ends of our existence. It implies justness, right and adjusted relations of man.

A definition of justice is: conformity in conduct or practice to principles of right. We may speak of it both as a passive state, in which there is a perfectly adjusted equilibrium between man and his fellow men; or, as a process of restoration of the maladjusted relations of man! And again we often speak of it as a retribution for wrong—a meting out of justice. In this latter sense it is often used, but inaccurately.

It is obvious that the basic idea of justice centers about rights. That conduct and relations shall be just so as it is considered they ought to be. There is therefore some rule apparently about what is considered to be justice. If justice is to be done among men, right rules for just relations must be found and administered. The great question therefore is, How and where shall these rules be found? Moreover, how shall we know if they be right? What is right anyhow? The idea of justice is a very elusive sort of one. Many people have it on their lips and use it glibly, and it is the cry of many others who make strong demands for what they consider to be their rightful claim upon it. It is therefore our purpose to look a little more closely at its character, its aims and its determination.

In speaking of its character we would ask first, Is there such a thing as natural justice? But what would that mean, and whence would it come? Of course, there is no justice in nature, or just naturally existing somewhere in the air, or falling out of heaven upon this earth. Justice comes to us through thought. It mani-

fests itself to man through circumstances. It is a familiar phrase in the law that out of the facts the law arises. And justice is law, and law is justice because there can be no undefinable something apart from fixed rule that can be called justice. Justice and right is the capacity to do that which is commonly acknowledged just and proper to do under the circumstances of life one happens to be in. Therefore the only natural thing about justice is the circumstances that are conventional. But there is something fundamental to circumstances that make them natural, when they are the basic human relations of life.

One fundamental human relationship is that of sex. Then there is the home, society, business, church and education, and many other spheres. They each have their peculiar circumstances grouping themselves about and upon these relations. Life's circumstances in these spheres grow quite naturally upon these relations because of the human psychical elements that urge for satisfaction in the relations man is placed. Man must mate, rear offspring, have society, must eat and be clothed, has spiritual needs and needs of knowledge and so forth; and consequently these needs bring him into many kinds of circumstances for their realization. In all these he must have rules for right conduct, he must know the right thing to do, and must do the right. Doing the right means to maintain right human relations. Without human relation there could be no justice; there would be need of none. The character of justice in the first place is that it is dependent upon and related to the basic human relations.

Its next characteristic is that justice is thought out by the human mind. Where man's desires make themselves manifest through the human relations, it becomes evident that man cannot live and be for himself alone and have his own way. It must therefore be determined how far each man can have his own way commensurate with the like desires of his fellowmen for self-realization. A way must be thought through the human circumstances to the proper rule for regulating human conduct.

There is no pure justice because human life is so very complex. We may speak of balanced justice because of the careful balance that must be used to weigh the many claims for alleged rights in the circumstances. Often the sociologist and the reformer berate the law and justice because it does not accept their ideas of what is right. But law and justice must consider many conflicting claims, and an equitable adjustment must be made between the contending parties and claims of right. The human mind is called upon to function keenly here. Therefore the maximums and philosophies of the wise, as well as moral and religious precepts are drawn upon to help solve the right by the keen knowledge of human reason.

What is the aim of justice? We have said that it is not an end in itself. Naturally not. Justice aims at just human relations and conduct. But why? It is in order that man may carry on his work here upon earth and that human society may to that end and purpose be possible. The particular human society that is to be made possible is that which is needed for the particular times in which we live. Of course, there is individual justice dispensed, and justice also deals with the individual case when wrong is to be righted. Often also there are class and group rights that are confirmed to the class and group; but even so, the interest of justice and law is in the whole of society.

It is not the aim of justice to bring happiness to mankind. Happiness cannot be complete when only justice is involved. Happiness is too comprehensive to be recompensed by justice. Right relations no doubt have much to do with our happiness, but they pertain only to the happiness of right relations; however, these relations may be very extensive and cover a large part of our daily existence.

Spiritual and aesthetic enjoyments, though they may not be fully enjoyed when we are disturbed in mind, or disturbed by fellow men from enjoying these; nevertheless, these things and the enjoyment of them are not directly a part of happiness that we would expect to get from justice. And so the aim of justice is not happiness.

Nor is equality the aim of justice; for justice does not necessarily imply equality. There may be and are many cases where certain classes require protection as a class over against others. A weaker class must be protected against a powerful one if the latter attempts to use its power oppressively. The workmen's compensation law is class law, but is regarded as just.

There is more in life than happiness, equality, and even justice itself. Man has a task to perform on earth, namely, to subdue the earth and master it. He is doing it. But in every age the task differs from the preceding one, and will again differ from the next. The economic changes bring this about. It is obvious that our industrial age with its factory system and its classes of capital and labor bring about different relations than did the feudal or the guild system. And so the aim of justice is, or should be a state of society, or the maintenance of a state of society such as in its peculiar historical period is necessary to enable man to do the job which in this particular historical period is required of him. We speak of man as mankind; and man as an individual must fit into the general scheme and do his part in the big job that mankind must do. This maintenance of the social order of the particular period of history we occupy to do the job then before us being the aim of justice, it is obvious that the individual and individual relations must be related to and adjusted to this historical social order. This proper relating will produce proper justice for this period of the world's history, for society, class and individual alike.

How shall this justice be determined? Obviously by balanced judgment applied to the human psychical make-up as it seeks its realizations through the human relations. There are perhaps three fundamental notions upon which principles of justice are built up; namely, hurt no one; give every man his due, and take not from any one that which is his. These fundamental notions are imbedded in man's make-up; and were this not so, there would be nothing for justice, right and law to get founded upon and started from. From these general notions principles of human conduct are developed. And from these principles rules of action for particular cases are promulgated; and thus we have our law, specifically our common law. Statutory law is also supposed to be and should be based upon principles of right; but it often is arbitrary; and very generally pertains to matters of utility and expedience rather than to fundamental human relations. The codes are of course exceptions to this, but they are a codification of what upon principle has been developed as just rules for human conduct.

But where do we find justice determined, either in the basic notions, general principles or rules of conduct? If we recall that justice is right, we will understand that it is right that determines justice, and the right must be found and determined in exactly the same way as general principles and rules for human conduct. The general wisdom and experience of mankind determines all of these from the circumstances giving rise to them. Man has his needs; economic, physical and spiritual, and these urge him and force him into relations with his fellow men and women, for their satisfaction and realization. And there is competitors among men for realization of their needs and desires. Room must be given for all to attain to their needs. Equal opportunity for all must be given, and everyone should realize the full his wants and needs commensurate with the like right of

others. It is therefore we speak of balanced right, because it is the fault of the agitator and class leader generally to want only what he considers his so-called just rights without a proper regard to rights others may equally well assert in the same circumstances. Therefore there is often conflict between the so-called reformer and sociologist and the law, because there is lacking in the former a sense of the just proportion of things. True, it is out of these claims that are made that rights grow and are sanctioned, and it is often difficult to determine in how far the claims shall be allowed and how they shall be squared with opposing demands until we have the right established. Justice is a process and a complex thing. It requires all the wisdom and experience of man to determine it. His intellect, his emotions, his religion and his sexual self all enter into the determination of it. It is the general consensus among men of what is right guided by the elements just mentioned which has determined what shall be proper, that controls him when he faces his life situations for which he must find his rules of right for human conduct. Often he reasons by analogy from situations he has already mastered. And so justice is not an abstract thing and easy of determination in each case, but a gradually grown system in which we cannot dispense with the wisdom of the past. We must ever defer to the sages and the experience of mankind for our knowledge and guidance of what is right. Thus in brief is justice determined.

The basic notions and fundamental relations and psychical urgings do not change, but principles of justice may and do change and grow, depending upon changing circumstances and experience. But because man is conservative, stability in justice is guaranteed, unless an entire new economic order as, for example, the communistic is brought about by revolution. And it remains to be seen whether or not even the Bolshevists can overcome human nature and fundamental relations. These latter factors are God given, we believe, and therefore the fundamental principles based on these are unchangeable, though circumstantial principles may change with history. Justice is an eternal gift to man from above.

"HONOUR" OBLIGATIONS IN MARINE INSURANCE

By Donald Mackay

A LIQUIDATOR'S DUTY

A liquidator, like the trustee in a bankruptcy, has with regard to contracts made by the company prior to liquidation, the option of taking over performance of them or of submitting to a ranking in respect of damages for their breach. But this option is necessarily confined to contracts which are enforceable against the company either in performance or in damages, and the honourable obligations arising out of verbal contracts of marine insurance are not enforceable in either form. Again, the liquidator, if a voluntary liquidator, may carry on the business of the company so far as may be necessary for the beneficial winding-up thereof—Companies Act 1908, section 151 (1) (b), and section 186 (iv), and this power may extend to a company whose business is conducted largely through the medium of honourable, as distinct from legally enforceable obligations—so long as there is nothing unlawful about it. The business is placed under the liquidator's administration as the Company conducted it; and, as already stated, the conduct of a marine insurance business in this country necessarily involves both the undertaking and the strict performance of purely honourable obligations. If, therefore, the liquidator were to carry on the business to any extent it might become his duty to observe each and all of the honourable obligations already incurred by himself in so carrying it on; because *ex hypothesi*, such carrying on of the business would be necessary for the beneficial winding-up; and if he did not do so, he might be removed.

It might be said that in this way there resulted an indirect legal sanction for both the performance and the enforcement of these honourable obligations. At any rate, it is clear enough that, if the company had a good-will to be preserved or salved, and if the business was carried on —more or less—in order to enable the good-will to be realized, it would be a *sine qui non* that the liquidator should scrupulously protect the mercantile honour of the company and its business, which he could only do by compliance with the professional rules regulating the recognized practice of brokers and underwriters.

These principles received an interesting application in the case of the liquidator of the Clyde Marine Insurance Co. v. Renwick & Co., 1924, S. L. T. 17, in which the liquidator presented two questions for the opinion of the Court. The first case arose out of the fact that prior to the date of the voluntary liquidation, the company had initialed a slip presented to it by an insurance broker, and had received from the latter the usual closing slip, but had not so far executed the policy which in the ordinary course of business it would have signed and issued to the broker. The main questions under this case were whether the liquidator should now sign and issue a policy in respect of this slip; or (if not) whether he could sign and issue a policy if he thought it would be beneficial for the interest of the creditors and shareholders to do so? A further question as to the liability of the company to pay losses which would have been covered by such policy notwithstanding that no policy was actually executed or to pay damages in respect of the non-issue of such policy, was included in the petition; but both parties agreed that this question was not susceptible of any but a negative answer.

The second case arose out of the fact that after the liquidation had commenced the liquidator did sign two marine insurance policies in favor of the holder of two of the company's slips, one of which was issued to such holder before any doubt as to the propriety of this course had occurred to him. The main questions under this case were (First) with regard to the signed but unissued policy, whether the liquidator should now issue it; and (if not) whether he should now issue it if he thought it would be beneficial to the creditors and shareholders to do so? (Second) with regard both to the policy which had been signed and issued and to that which had been signed only, whether the company was liable in payment of any losses which might have occurred? and (Third) if it were held that the Company was not so liable, whether the liquidator should cancel the issued policy and repay the premium?

The respondents interested in the first case conceded that their slip does not constitute a marine policy within the meaning of the Marine Insurance Act, 1906 (6 Edw. VII. cap. 41). While it undoubtedly reflects a concluded verbal contract of marine insurance made between the company as insurers and the broker as representing the assured, the slip is inadmissible in evidence under section 22 of that Act unless and until embodied in a written marine policy. It necessarily follows from this that the slip cannot even be regarded as evidence of a contract to sign and issue such a policy. Moreover, by section 93 (1) of the Stamp Act, 1891 (54 and 55 Vict. cap. 39), contracts for sea insurance—such as that of which the slip is a memorandum—are invalid unless expressed in a policy of sea insurance.

Notwithstanding all this, in the practical conduct of marine insurance business the slip plays a part of the greatest importance. It is by means of the slip that the actual business of the broker and underwriter is done; and although there is no obligation to pay the premium except against issue of the policy, or to issue the policy except against payment of the premium (section 52 of the Act), yet the

honourable obligations between underwriter and broker to carry through the piece of insurance business to which the slip refers are of the highest kind, and are sanctioned by the penalty of exclusion from professional intercourse which brokers and underwriters alike mete out to anyone who fails in the strict observance of them. But while such exclusion may be no more unlawful than the contracting of the honourable obligations themselves, both those obligations and their sanction are wholly extra-legal.

What then ought the liquidator to do? Applying the principles above explained to the circumstances before the Court the Lord President said—"In the present case the company admittedly has no good-will to be preserved or salved. What is more, the liquidator does not profess to be carrying on the business of the company to any extent, or to desire to adopt that course. The question put to us is whether, in liquidating the company's assets and liabilities, he is entitled to pick and choose among the slips initialed by the company prior to the liquidation, issuing a marine policy in the case of those slips the risks contemplated in which can be ascertained to have run off, and repudiating all obligation to issue a marine policy in the case of those which would, or might, involve liability for loss in the event of the issue of a policy. Whatever may be thought of this leonine interpretation of the liquidator's rights and powers, it would in my judgment, be impossible to bring such a course within the description of carrying on the business of the company to any extent whatever, no matter how much it might conduce to the beneficial winding-up thereof. If the business of the company is to be carried on to any extent, that must be done in accordance with the nature of the business as placed under the liquidator's administration; and to pick and choose among the honourable obligations incurred by the company in the ordinary course of its business—on the principle of 'heads I win, tails you lose'—would be a course of proceeding totally at variance with the nature of the company's business. It would be altogether inconsistent with the principles on which alone such a business could be carried on at all. The conclusion to which this reasoning, if sound, seems to me inevitably to lead is that the liquidator is not entitled to issue a marine policy in respect of the slip referred to in the first case."

And as to the second of the two cases, his Lordship continued—"It appears to me, for reasons which have been already indicated, that the liquidator had no power to sign or issue policies with respect to either of the slips therein referred to, unless in pursuance of his power to carry on the business of the company. The liquidator, however, has not exercised this power to any extent; and it was therefore *ultra vires* of him to convert the slips into enforceable obligations in the shape of marine policies. I see no difference in this respect between the policy which was signed and lay in the company's office for delivery when called for, and the policy which was actually handed to the broker.

Accordingly it was held in the first case that the liquidator was neither entitled in the interests of the creditors nor bound apart from consideration of such interests, to issue a policy in terms of the slip, and that he was under no obligation either to pay or to admit to proof in the liquidation any claim for loss which would have been covered by the policy if it had been issued or for damages for its non-issue. And in the second case the Court held that it was *ultra vires* of the liquidator to sign either policy; that he was under no legal obligation to pay any losses covered by the policies, and that it was his duty to cancel both policies and credit the broker in the issued policy with the premium debited in his account.

COVENANTS—BUILDING RESTRICTIONS

TAYLOR v. LAMBERT

124 Atl. 169

(Supreme Court of Pennsylvania, February 25, 1924

Under a deed restricting erection of buildings designed or used for any purpose other than a private dwelling house, erection of an apartment house could be enjoined, because "private dwelling" is commonly understood to be single, private, personal, and an "apartment" as a sort of tenement, "dwelling" eliminates all business buildings, and "private" restricts residential buildings of a public character, i. e., hotels and apartment houses, which are not a number of private dwellings built one on the other, but a collection of dwellings, the restriction being in the singular, not the plural.

KEPHART, J. Plaintiffs filed a bill to restrain the erection of an apartment house on a lot of ground located on the west side of Sixty-Third street in Philadelphia. Appellant intended such building to have a common entrance, hall, and stairway, to be used as an apartment house is ordinarily used. The court's restraining order is based on the restriction in appellant's deed, which reads "subject to the further restriction that there shall not be erected upon the above described and hereby mentioned lot of ground or any part thereof a building or buildings designed for any other purpose than a private dwelling house, and that no such building erected thereon shall be occupied or used for any purpose other than a private dwelling house."

[1, 2] Appellant endeavors to bring his case within Johnson v. Jones, 244 Pa. 386, 90 Atl. 649, 52 L. R. A. (N. S.) 325; and Hammett v. Born, 247 Pa. 418, 93 Atl. 505. In the former, we held a covenant restricting the occupancy of the ground to a "dwelling house" did not cover a series of buildings, to be four stories in height, each story to consist of a separate apartment or flat for use as housekeeping apartments. In the latter case we held a restriction "not more than one single dwelling" did not include duplex houses designed for the occupancy of two families, under one roof, with a complete and independent set of apartments. See Gillis v. Bailey, 21 N. H. 149, for a view contrary to both cases. The restriction in this case is "a private dwelling house."

All doubts must be resolved against the restriction and in favor of a free and unrestricted use of the property. Such is the rule laid down in Johnson v. Jones, supra. But the words "private dwelling house" have a much more restricted meaning than that attributed to "dwelling house" or "one single dwelling" in the prior cases. Their use not only exclude tenements or buildings erected and operated as a business venture, having many of the characteristics of a hotel, such as an apartment house, but there is a well-defined difference between an apartment house, operated by the owner for profit through leasing different stories or suites of rooms, and a dwelling intended and calculated to be for the sole and exclusive occupancy of one family, suitably constructed for that purpose. In the term "a private dwelling," the word "dwelling" restricts the character of buildings by eliminating all buildings for business purposes, such as stores, livery stables, garages, factories and the like. The word "private" further restricts the buildings to be placed thereon by excluding all such as are used for residential purposes of a public character, like hotels and general public boarding or apartment houses. An apartment house it not a number of private dwellings, built one upon another, but a collection of dwellings objectionable to the restriction, which called for a single dwelling. Skillman v. Smatheurst, 57 N. J. Eq. 1, 4, 40 Atl. 855, 856, where the restriction was against a building "other than for the use or purpose of a private dwelling." The restriction is in the singular, not in the plural. An apartment house is not strictly a private dwelling; it is a place for housing a number of people grouped in families assigned to different sections in the same structure. Carried to its logical conclusion (as the size increases so does the population), it would embrace a building 20 stories high, or 40 stories high. Ordinarily every one knows the difference between a private dwelling house and an apartment house.

Such restriction is violated by the use of a building on the premises as a public boarding house (Gannett v. Albree, 103 Mass. 372, 374); or by three families living separate and apart (Levy v. Schreyer, 27 App. Div. 282, 50 N. Y. Supp. 584, 586); as a day school for girls under 13 for music and dancing (Wickenden v. Webster, 6 El. & Bl. 387, 391, 119 Reprint 909); as a private santitarium (Barnett v. Vaughan Institute, 134 App. Div. 921, 119 N. Y. Supp. 45, 46); by two or more families, or one built for that purpose (Koch v. Gorruflo, 77 N. J. Eq. 172, 75 Atl. 767, 768, 140 Am. St. Rep. 552). The precise question was decided adversely to appellant in Rogers v. Hosegood (1900), 2 Ch. 388, 69 L. J. Ch. 651. The distinction between a private dwelling house or a private residence on the one hand and a house built or occupied as a residence for two or more families is quite obvious. In the one case it is single, private, and personal; in the other it is a sort of tene-

ment affair. While the families occupy separate apartments distinct from each other, they are not private residences as the term is ordinarily understood.

The restriction in this deed prohibits the erection of an apartment house.

The decree of the court below is affirmed, at the cost of appellant.

NOTE—*Apartment Building Violative of Restriction Against All Buildings Except Private Dwellings.*– A covenant in a deed provided against the erection on the land conveyed of any "house except private dwellings." It was held that a three-story building, each floor constituting a complete apartment for housekeeping, was not a private dwelling within the meaning of the covenant; that the covenant was one against construction and not against use; and the fact that defendant did not intend to have it occupied by three families was immaterial. Levy v. Schreyer, 27 App. Div. 282, 50 N. Y. Supp. 584, reversing 19 Misc. 227, 43 N. Y. Supp. 199.

A restriction against the use of land for any purpose except private residence, was held to be violated by the erection of a dwelling house designed to accommodate two families to occupy the same. Koch v. Gorruflo, 77 N. J. Eq. 172, 75 Atl. 767.

An apartment house was held to violate a restriction requiring the land to be used for residence purposes only. Burton v. Stapely, 4 Ohio N. P. (N. S.) 65, 17 Ohio, Dec. 1, affirmed 74 Ohio St. 461, 78 N. E. 1120.

On the other hand, an apartment building has been held not to violate a restriction against the use of land for other than dwelling houses. Reformed Protestant Dutch Church v. Madison Avenue Bldg. Co., 163 App. Div. 359, 148 N. Y. Supp. 519.

A covenant not to erect any building other than "a dwelling house," was not violated by the erection of an apartment building. It appeared, however, that effect was given to a prior construction of this covenant by the parties, who had erected two-family houses on single plots of ground. Underwood v. Herman & Co., N. J. Eq. 89 Atl. 21.

Land restricted to use for a detached dwelling house could not be used for an apartment building. Pearson v. Adams, 27 Ont. L. Rep. 87, 3 Ont. Wkly. N. 1660, 7 D. L. R. 139.

WASTED BREATH

A Texas attorney was delivering a Fourth of July oration. He had held forth prosily for nearly an hour, apparently without getting anywhere. At length he stopped, and then said in impressive tones: "I pause to ask myself a question."

A voice from the back of the hall shouted: "Better not. You'll only get a fool answer."—Lawyer and Banker.

ITEMS OF PROFESSIONAL INTEREST

THE LAW SOCIETY'S DINNERS TO THE AMERICAN BAR

The Law Society is taking part, not only in offering through its members private hospitality to members of the American Bar Association soon to be visiting England, but also by giving two public dinners in their honor. In this, as stated last week, the Law Society is performing precisely the same functions as those of the four Inns of Court, and this will generally be regarded as a highly desirable arrangement. American lawyers are neither barristers nor solicitors; they practise in both capacities at once. In fact, their correct official designation is "Attorney and Counsellor-at-Law." It is true that not all American lawyers are members of the Bar Association; but that is simply because this body, like our Law Society, is not one of which membership is compulsory on practitioners. Moreover, all practitioners who join it are required to sign the "Canons of Advocacy," recently published in these columns, which have done so much to raise the ethical standard of advocacy in the United States. But membership of the Bar Association, we are informed, in no way implies that the members specialize in court practice or in advocacy; in fact most of its members practise as what we should call solicitors. It is therefore peculiarly essential that the Law Society should have joined in the arrangements for their welcome.—Solicitors' Journal.

RECENT DECISIONS BY THE NEW YORK LAWYERS ASSOCIATION. COMMITTEE ON PROFESSIONAL ETHICS

QUESTION No. 227

In its answers to Questions Nos. 69 and 91 the Committee expresses its disapproval of the practice of attorneys investigating unsatisfied judgments and communicating with judgment creditors asking their authority to proceed with the collection. In its opinion is it improper for an attorney, having information respecting a judgment debtor, which, in his opinion, would enable him to enforce the amount of an unsatisfied judgment, to communicate with the attorney of record of the judgment creditor, advising him that the first named attorney has such information and would like to obtain authority to collect the judgment on a contingency basis, agreeing to divide his compensation with the attorney of record? In the Committee's opinion is it improper for the attorney of record to transmit the offer to his client, and in case of collection, to share the compensation?

ANSWER No. 227

In the opinion of the Committee, it is improper for an attorney to make a practice of investigating unsatisfied judgments recovered by persons with whom he has had no previous professional or personal relations, for the purpose of being employed in their collection.

There may be circumstances under which an attorney having information which he thinks will lead to the enforcement of a judgment may and even should communicate it to the attorney for the judgment creditor, but if he offers to communicate the information only upon condition that he be employed, his conduct is not to be approved. The impropriety of such solicitation of employment is not cured by making the approach to the judgment creditor through the attorney of record.

The attorney of record should transmit the offer to his client and give him the opportunity of availing himself of it and should at the same time inform his client of the character and possible consequences of the work proposed to be done.

Any agreement made by him for sharing compensation should be with the knowledge of his client, and such participation should be based upon his services and responsibility.

QUESTION No. 228

An attorney, in behalf of a client, procured a judgment; an examination of the judgment debtor and other witnesses in supplementary proceedings failed to disclose property of the debtor; but by chance the attorney has learned of other litigation in which it appears by record evidence that others are secretly interested in the debtor's business, so as probably to be responsible for his debts.

It seems probable also that there are other judgment creditors of the same debtor, ignorant of the facts, who have been unsuccessful in collecting their debts.

The attorney does not make a practice of seeking employment to collect unsatisfied judgments. Under these circumstances, is it the opinion of the Committee that the attorney may, with professional propriety, seek to ascertain whether there are other judgment creditors of the same debtor, and when ascertained, to communicate with their attorneys of record for the purpose of seeking their co-operation in behalf of their clients, to institute litigation to impose liability for the judgments upon those so secretly interested.

ANSWER No. 228

In the opinion of the Committee, if the client's interest, in the attorney's judgment, lies in the co-operation mentioned, then there would not be professional impropriety in so seeking it. The Committee (answers No. 199 and 227) has heretofore disapproved a lawyer's stirring up litigation by acquainting strangers or their attorneys with rights unknown to them upon which litigation can be predicated in their behalf, save under exceptional circumstances, which may justify it in a special case. The promotion of the client's interest may furnish the exception in the present case.

QUESTION No. 229

In an undefended divorce action brought by a wife, an interlocutory decree of divorce has been entered; before the final decree, husband and wife together call upon the wife's attorney without the previous knowledge or procurement of the latter, and the husband offers to pay the attorney the amount of his fees previously agreed upon between the wife and her attorney, the payment to be deducted as a credit from a debt owing from the husband to the wife. The attorney from his previous investigation of the facts has been and remains satisfied that the offense was not collusive. He is also satisfied that the proffered payment will not impair the husband's ability to pay alimony for the support of the wife and a child.

In the opinion of the Committee may the attorney without impropriety accept the husband's offer, made with the approval of the wife, and proceed to enter the final decree?

ANSWER No. 229

In the opinion of the Committee, no professional impropriety is disclosed in the question.

THAT MATTERED NOT

The junior partner was interviewing a very pretty girl who had applied for a position. The senior partner came in, and after inspecting the vision, called his partner aside and whispered, "I'd hire her."

"I have," replied the junior partner.

"Well, can she take dictation?" asked the elder member of the firm.

"We'll find that out later," replied the junior partner. "I didn't want any obstacles to crop up."—Louisville Courier-Journal.

DIGEST.

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Automobiles**—Employee.—One employing a truckman and going along with truck to point out materials to be hauled did not, by accepting the designation of the truck and the chauffeur, make the chauffeur his temporary employee, where he did not interfere with the manner of doing the work.—Scheer v. Melville, Pa., 123 Atl. 853.

2.——Evidence.—In a prosecution for driving an automobile while intoxicated, in violation of Laws 1921, 1st Extra Sess., p. 103, § 27, subsec. (g), admission of all facts connected with the offense, including death of witness' son, who as accused's guest was killed when the car overturned, held properly admitted, so that the jury might properly make punishment fit the offense prescribed under section 29, subsec. (c), and hence, in admitting testimony that deceased was a member of witness' family and that witness saw his body at the funeral parlor, trial court did not commit reversible error, notwithstanding that such testimony was not necessary to the case.—State v. Hatcher, Mo., 259 S. W. 467.

3.——Negligence Instructions.—In consolidated actions for damages arising from defendant's alleged negligent operation of an automobile, in which plaintiffs were riding as defendant's guests, an instruction that it was defendant's duty to drive the car at such a rate of speed as a reasonably prudent man would have driven it at the time and place and under the circumstances, and that if he failed to do, or did, so far as the speed and handling and operating of the car was concerned, at the time, place, and under the circumstances, what a reasonably prudent man would have done or would not have done, he was guilty of negligence, held proper.—Iannicelli v. Benvenga. Iannicelli v. Same. Benvenga v. Same., N. J., 123 Atl. 882.

4. **Bailment**—Release From Negligence.—Where a laundry company, upon accepting articles of wearing apparel from a customer for the purpose of laundering the same, leaves with the customer a printed memorandum that the articles are accepted by the bailee with the understanding that the bailee is not responsible for damages in case of fire, there arises no contract releasing the bailee from liability for damage to the articles on account of fire, since there is no special agreement between the parties by which the bailor agrees to release the bailee from liability on account of the latter's negligence. American Laundry Co. v. Hall, 27 Ga. App. 717, 109 S. E. 676.—Red Cross Laundry v. Tuten, Ga., 121 S. E. 865.

5. **Bankruptcy**—Fire Insurance.—Where mortgagee of stock of goods was assigned a fire policy on the goods to secure indebtedness to him long prior to any claim of the creditors under the Bankruptcy Act, the mortgage being filed, the assignment carried the insurance to the amount of mortgagee's indebtedness, and agreement to insure to secure the indebtedness carried a renewal of the policy, and the proceeds of the policy being paid to the debtor's trustee in bankruptcy, because the insurance company had no notice of the assignment, the mortgagee has an equitable title in or lien on the proceeds of the policy to the extent of the indebtedness.—In re Conrad, U. S. D. C., 295 Fed. 864.

6.——Insurance.—Trustee in bankruptcy is not entitled, under Bankruptcy Act, § 70a (Comp. St. § 9654), to the cash surrender value of a life policy of a bankrupt in Kentucky, where the beneficiary is a person other than the insured even though insurer retains right to change beneficiary in view of Ky. St. § 655, entitling the beneficiary to the proceeds as against creditors.—In re Renaker, U. S. D. C., 295 Fed. 858.

7.——Insurance Money.—Trustee in bankruptcy was entitled to moneys borrowed by bankrupt on life policies in which wife was beneficiary in the State of Washington, where all of the money that went to pay insurance premiums was property of the bankrupt's estate, and the taking out of the insurance and the filing of the petition in bankruptcy occurred approximately at the same time.—In re Levinson, U. S. D. C., 295 Fed. 736.

8.——Trust Funds.—Where bankrupt, a building contractor, gave petitioner, a furnisher of materials, an order on the owner, payable out of retained percentages when due, which the owner accepted, a sum paid by the owner to bankrupt's trustee in settlement of a claim for retained percentages held impressed with a trust in favor of petitioner created by the order and its acceptance.—In re Seaboard Engineering Co., U. S. C. C. A., 295 Fed. 852.

9. **Banks and Banking**—Collections.—As between banks, a collecting bank, not giving any new credit on the faith thereof, has no lien, on drafts entered for collection for a balance of account arising from previous dealings.—Bank of the United States v. Irving Nat. Bank, N. Y., 203 N. Y. S. 906.

10.——Offset Against Acount.—Where a bank erroneously credited the account of plaintiff's father with funds belonging to another and plaintiff's father dishonestly withdrew those funds and then redeposited them in plaintiff's name, held that the bank was entitled to offset the dishonest withdrawal against that account.—Cooper v. Public Nat. Bank, N. Y., 203 N. Y. S. 642.

11. **Bills and Notes**—Consideration.—The vendee of a stock of merchandise sold in bulk without compliance with the provisions of the Bulk Sales Law, as part payment for the merchandise and at the request of the vendor, executed his promissory note to a creditor of the vendor. Held the note was given for a valuable and adequate consideration.—Kansas City Wholesale Grocery Co. v. Ridgeway, Kan., 224 Pac. 38.

12.——Extended Time.—An agreement by the holder of a note to "extend indefinitely time of payment," in consideration that the maker remain in his employ, means extension for a reasonable time, normally ending when the maker left his employment, especially where the written agreement attached to the affidavits of defense stated that the holder "will not press for immediate payment."—Lanahan v. Clark. Same v. Beach, Pa., 123 Atl. 798.

13. **Carriers**—Street Car Company's Liability.—Proof of a collision between a street car and a motor truck, and consequent injury to a passenger in the former, gives rise to a presumption of negligence, though the truck was not under the carrier's control, and casts on the latter the duty of showing that the collision could not have been avoided by exercising the highest degree of care.—Cecil v. Wells, Mo., 259 S. W. 844.

14. **Commerce**—Electric Passenger Interstate.—A carrier operating electric passenger cars between

Buffalo and Queenston, Ontario,, held engaged in "interstate commerce," in operating another line wholly within the city of Buffalo, issuing transfers to the international line and accepting transfers from it, though the bulk of the traffic was intrastate.—Borelli v. International Ry. Co., N. Y., 203 N. Y. S. 704.

15.——Goods in Warehouse.—Where a shipment was stored in carrier's warehouse at destination, because of disputes between buyer and seller, its character as shipment in interstate commerce ceased, and Laws Ill. 1921, p. 754, regulating warehouses, was applicable thereto without interfering with interstate commerce, in violation of Const. U. S. art. 1, § 8.—Rudin v. King-Richardson Co., Ill., 143 N. E. 198.

16.——Interstate Employee.—Employee of interstate railroad, who was employed in painting block signals and in performance of his duties required to go from one point to another in motor car operated on railroad's tracks, was engaged in "interstate commerce," within the federal Employers' Liability Act (U. S. Comp. St. §§ 8657-8665), when thrown from such car, since he was engaged in duties which required him to keep in repair an instrumentality used in directing and controlling the operation of interstate commerce.—Brewer v. Missouri Pac. R. Co., Mo., 259 S. W. 825.

17.——License.—Statute requiring commission merchants and brokers to pay a license tax based upon gross commissions received from all sources, held inapplicable to a foreign corporation conducting a branch office within the state for the sale as agent of coal mined and being in other states without warehouses, or coal storage yards in the state, since its business constituted "interstate commerce."—Commonwealth v. Castner, Curran & Bullitt, Va., 121 S. E. 894.

18.——Natural Gas.—Natural gas being excluded from the purview of the Interstate Commerce Act (U. S. Comp. St. § 8563 et seq.), it, even if still in interstate commerce, is, as regards its distribution in Pennsylvania by a utility of the state, subject to the reasonable regulatory power of the state, though the utility seeks to discriminate against all the consumers in a particular locality in favor of all those in other places.—People's Natural Gas Co. v. Public Service Commission, Pa., 123 Atl. 799.

19.——Switching Crew.—Defendant railroad company brought into its yards a train of 16 cars, two of which contained interstate freight. Plaintiff, one of the switching crew distributing such cars, was injured when between two of the cars attempting to adjust an alleged defective coupling. Held that defendant was at the time engaged in interstate commerce; that the questions whether plaintiff was employed in such commerce and whether defendant was chargeable with violation of Safety Appliance Act, § 2 (Comp. St. § 8606), which contributed to the injury and brought the case within Employers' Liability Act, §§ 3, 4 (Comp. St. §§ 8659, 8660), were properly submitted to the jury.—Philadelphia & R. Ry. Co. v. Berman, U. S. C. C. A., 295 Fed. 658.

20.——Taxes.—Oil purchased by an oil company in Illinois, for transportation by its own pipe line to its own plant in New Jersey, was not in transit in interstate commerce and was taxable locally where stored in tanks until needed, or until it could be conveniently taken care of in New Jersey; the mere fact of intention to ship being immaterial.—Tidewater Pipe Co. v. Board of Review, Ill., 143 N. E. 87.

21.——Terminal Company.—A car inspector in the service of a railroad company, the western terminus of whose lines was at East St. Louis, Ill., when injured while performing his duty of ascertaining why the coupling apparatus of a mail car, constituting part of an interstate train being made up for such company at St. Louis, failed to work, held engaged in "interstate commerce" at the time, though the train, of which a crew of such railroad was in charge, was hauled to East St. Louis by an engine and crew of the terminal railroad company.—Hood v. Baltimore & O. Ry. Co., Mo., 259 S. W. 471.

22. **Constitutional Law**—Due process of Law.—There is no vested right in the decisions of a state court which are not laws within the constitutional provision against the deprviation by the state of any person of his property without due process of law.—Pfister v. St. Bernard Cypress Co., La., 99 So. 454.

23. **Corporations**—Bankruptcy Claim.—Where, after the time for filing claims against a corporation in the hands of receivers had expired, several banks advanced large sums of money for its reorganization, the government's application for permission to file a claim for over $500,000 was denied as being inequitable to those who advanced the money in the belief that no such claim existed, regardless of the fact that the government had previously been unable to ascertain the amount due, since it could have served notice that it had a claim.—Employers' Liability Assur. Corp. v. Astoria M. Co., U. S. D. C., 295 Fed. 767.

24.——Guaranteed Bonds.—A corporation issued a trust deed to a guarantee company to secure a bond issue, registered holder of some of these bonds made a false affidavit that his bonds had been lost and furnished the guarantee company with an indemnity bond of a surety company that subsequently failed, guarantee company indorsed on duplicate mortgage bonds, issued in place of alleged lost bonds that "the undersigned hereby certifies that the within is one of the bonds described in the mortgage therein mentioned," and plaintiff purchased the duplicate bonds. Held that guarantee company was liable to plaintiff for his proportionate share of the funds received by it for bondholders, though guarantee company had paid such share to transferee of the original bonds, as the certification amounted to a warranty that the bonds were entitled to the benefits afforded by the trust deed.—Reynolds v. Title Guarantee & Trust Co., N. Y., 203 N. Y. S. 851.

25.——Jurisdiction.—Assuming, because this was a suit against an express company, that the corporation referred to in the second question is an express company, that question is answered in the affirmative; that is, a domestic corporation with its principal office fixed by its charter in Richmond County, Ga., can be sued in Bibb County, Ga., though at the time of the suit it had no office, agent, or agency in Bibb County, and was not transacting business there.—Ellis v. Southern Express Co., Ga., 122 S. E. 48.

26.——License to Do Business.—The Knights of the Ku Klux Klan, chartered under the laws of Georgia as a benevolent and eleemosynary society, without capital stock, to conduct a patriotic, secret, social, and benevolent order, held "doing business" in Virginia when establishing local Klans, receiving and transmitting initiation and membership fees, equipping members with paraphernalia, etc., and hence subject to the fine imposed by Code 1919, § 3848, for failing to obtain the certificate required by section 3847, enacted pursuant to power given by Const. 1902, § 163; "doing business" not referring to the exercise of manufacturing and commercial functions only.—Knights of Ku Klux Klan v. Commonwealth, Va., 122 S. E. 122.

27.——Right to Sue.—In a corporation's action for building materials and services furnished defendants, where plaintiff's incorporation was admitted, and no objection to plaintiffs legal capacity to sue was raised by demurrer or answer, and defendants admitted that they owed plaintiff a substantial part of the account, and asserted a counter-claim against plaintiff in the suit, they could not, after judgment, deny plaintiff's incorporation on the ground that it was admitted under a mistake of fact.—R. B. Higgins Contracting Supply Co. v. Francis, Mo., 259 S. W. 819.

28. **Deeds**—Undue Influence.—Proof of undue influence in the execution of a deed is not governed by the same rules as to undue influence in an action to set aside a will, stronger proof being required to raise a presumption of undue influence in the case of a will than of a deed.—Folsom v. Buttolph, Ind., 143 N. E. 258.

29. **Evidence**—Limiting Liability of Insurer.—For the purpose of limiting liability, a policy of insurance contained a provision that its issuer should not be liable for any loss whatever on silks or articles made entirely or principally of that material. Held that such provision is plain and un-

ambiguous and that a loss of silk shirts was not covered under the policy; nor was parol evidence admissible to contradict such provision or to prove that the parties so interpreted it as to give coverage for silk shirts.—Fidelity & Casualty Co. v. Hartzell Bros. Co., Ohio, 143 N. E. 137.

30. **False Imprisonment**—Receiver Liable.—A receiver of a street railway company occupies the same position as regards liability for negligence of employees as the company would, and is liable in his official capacity for punitive damages for willful or malicious acts of his employees, such as that of a conductor in causing the arrest of a passenger without authority.—Comstock v. Wells, Mo., 259 S. W. 500.

31. **Frauds, Statute of**—Oral Acceptance.—A written offer to sell realty may be accepted orally, and thus become effective.—Zilmaur Realty Corporation v. Pinkney, N. Y., 203 N. Y. S. 715.

32. **Highways**—Cause of Accident.—The driver of an automobile on a public highway may be held liable for an accident occasioned through his negligent driving, although the immediate cause of the accident was the negligent act of a third party.—Holmberg v. Villaume, Minn., 197 N. W. 849.

33.——Degree of Care.—It is the duty of an automobile passenger who, in the exercise of such due and ordinary care as would be exercised by a reasonably prudent and cautious man, sees or should see that the driver is negligent, to warn, caution or attempt to persuade him to desist from his negligent conduct if a reasonably prudent and cautious man, in the exercise of such care, would have done so under the same circumstances.—Bauer v. Tougaw, Wash., 224 Pac. 20.

34. **Insurance**—Dealer's Open Policy.—Under a "dealer's open policy," covering all automobiles owned and for sale by insured, held that the parties undoubtedly contemplated that the general practice of dealers in handling cars "for sale" would be observed, but not that the cars insured under such a policy should be put to all of the general uses to which a car would normally be put by an owner.—Hunter v. Royal Ins. Co., N. Y., 203 N. Y. S. 833.

35.——Non-Valued Policy.—In an action on a non-valued policy of insurance against loss by theft and fire to an automobile, where there has been a total loss, the measure of recovery is the actual market value of the automobile at the time the loss occurs.—Gibson v. Glens Falls Ins. Co., Neb., 197 N. W. 950.

36.——Title to Property.—Where a fire policy containing a loss payable clause in favor of a mortgagee provided that the policy should be void if the interest of the insured were other than unconditional and sole ownership or if any change other than by death of insured took place in the interest, title or possession of the subject of insurance, held that a contract by insured to sell the property, the purchase price to be paid in installments, and when the principal of the indebtedness was reduced to a certain amount insured was to make a warranty deed on payment of the balance, did not constitute a change of title so as to forfeit the policy.—Trichel v. Home Ins. Co., La., 99 So. 403.

37. **Intoxicating Liquors**—City Ordinance.—City ordinance adopting prohibition act as an ordinance of the city as authorized by the Prohibition Act, § 27, was not special legislation providing for punishment of crime prohibited by Const. § 63, nor special because conferring a new jurisdiction on police courts with respect to one city, and therefore in conflict with Const. § 117, since the prohibition act was an act general in its nature.—Campbell v. City of Danville, Va., 122 S. E. 120.

38.——Possession.—Where warrant in prosecution for violation of Laws 1923, c. 1, § 2, charged unlawful possession, receipt, and transportation of liquor, a general verdict of guilty was sustained on the charge of unlawful possession, the evidence showing that defendant was seen to accept a bottle of liquor from another and drink therefrom and hand the bottle back to the man who passed it to him, the act being on the premises of neither.—State v. McAllister, N. C., 121 S. E. 739.

39. **Landlord and Tenant**—Destruction of Business.—In an action by tenants for damages for destruction of their business caused by their wrongful eviction by defendant landlord, evidence of net profits made in the business held properly admitted under general allegation of damages to establish the value of the business.—Quong v. McEvoy, Mont., 224 Pac. 266.

40. **Licenses**—Manufacturer's.—A person, engaged in the business of purchasing green coffee for resale after roasting, is not within Act April 22, 1846, § 11 (P. L. 489), as interpreted by Act Feb. 27, 1868, § 1 (P. L. 43; Pa. St. 1920, § 14735), exempting "manufacturers" from payment of a license tax.—Commonwealth v. Lowry-Rodgers Co., Pa., 123 Atl. 855.

41.——Stock Sales—Rev. St. 1919, § 11931, prohibiting the sale of stock, bonds and other securities by persons who have not complied with the provisions of the article, includes the sale of beneficiary shares, interests and certificates in a company, "stock" being the share capital of a corporation or commercial company, and such sale therefore including the right to the interest on shares of the capital stock of such company.—State v. Hudson, Mo., 259 S. W. 877.

42.——Theatrical Agencies.—Where defendant, a musician, engaged plaintiff as her exclusive manager to secure profitable engagements, and plaintiff was to receive as compensation 10 per cent of defendant's earnings, that plaintiff had not procured a license, under General Business Law, § 171, subd. 3 (as amended by Laws 1917, c. 770), requiring every theatrical "employment agency" to be licensed, but providing that such a term does not include the business of managing artists, where that business only incidentally involves the seeking of employment, held not to prevent a recovery for breach of contract, as the contract provided for management, and only incidentally for seeking employment.—Pawlowski v. Woodruff, N. Y., 203 N. Y. S. 819.

43. **Master and Servant**—Act Must Impose Liability.—Where a telephone repairman, sent to find out if plaintiff's telephone was out of order, emptied his pipe over the porch rail, and a short time after he left the house burned down, the court's failure to charge that repairman was acting in the scope of his employment, and that if the fire was the result of his act the company was liable, held not erroneous, since, even if he had been in company's service at the time, this would not be sufficient in itself to impose liability.—Adams v. Southern Bell Telephone & Telegraph Co., U. S. C. C. A., 295 Fed. 586.

44.——Establishd by Control.—Where there is a hiring of an automobile or other vehicle by the owner, who furnishes the driver, and the hirer exercises no control over the driver except to direct him when and where to go, the driver is the servant of the owner, and not of the hirer, and the former is responsible as master for damages caused by the driver's negligence.—Dubisson & Goodrich v. McMillin, Ark., 259 S. W. 400.

45.——Safe Place.—A contracting stevedoring company engaged in loading a ship, as well as the shipowner, was liable for injuries to a stevedore, injured by the falling of a lifting appliance furnished by the ship; its duty to furnish its employee a safe place in which to work and reasonable safe appliances extending to the ship temporarily in its possession and control.—The Thomas P. Beal. Holmes v. Crowell & Thurlow S. S. Co. Crowell & Thurlow S. S Co. v. Western Stevedore Co., U. S. D. C., 295 Fed. 877.

46. **Municipal Corporations**—Bad Condition Known.—Where a motorcycle rider, going at a speed of 12 miles per hour, during broad daylight, and with an unobstructed view, sustained fatal injuries when he drove into a hole in the street, 3½ feet wide, 2 feet long and 10 inches deep, the bad condition of the road being known to him, held that a non-suit on the ground of contributory negligence was proper.—Shepherd v. City of Philadelphia, Pa., 123 Atl. 790.

47. **Mortgages**—Land and Movables.—Where mules were sold as part of a plantation, and the plantation and the live stock thereon were spe-

cially mortgaged by an act containing the pact of non-alienation duly recorded in the mortgage records, but not filed as a chattel mortgage, and the purchaser sold the plantation and the mules to one who assumed the mortgage debt and sold the mules to defendant, held in an action by one who inherited the debt owing to the original vendor to sequester the mules, that defendant having acquired the mules in good faith held them free from the mortgage, notwithstanding Act No. 169 of 1914, providing that no mortgage on rural real estate shall affect the live stock unless it be specially mortgaged; such act not affecting the rule that a mortgage on movables is maintained only so long as the condition of the immovables by destination continues.—Sacco v. Centerville Co., La., 99 So. 452.

48. **Negligence**—Driver's Wife.—Where an automobile driver's wife died from injuries received in a collision with another automobile, even if husband's negligence contributed to the accident, he was entitled to recover for wife's death, if defendant's negligence was also the direct and proximate cause of her injuries.—Burd v. Bleischer, N. Y., 203 N. Y. S. 754.

49. **Principal and Agent**—Date of Contract.—Exclusive automobile agency contract, providing that each party should make up and keep "prospect" cards and that the respective salesmen of the parties who first filed with his employer a "prospect" should be permitted to complete the sale and should be entitled to receive his commission on the sale, held not applicable to sales made to prospects secured prior to execution of contract, where final executoin of the contracts alone remained to complete the sale, especially in view of such construction of the contract by the parties themselves.—P. K. Webster Co. v. Roamer Motor Car Co., Calif., 224 Pac. 258.

50. **Sales**—Amount of Damages.—While ordinarily the first item of damage would be the difference between the contract price and the value of the commodity sold, at the time and place of delivery, yet where the materials had no market value and could not be resold at the time and place of delivery, the damage may be measured by the difference between the contract and what it would have cost him to perform. Wallace v. Tumlin, 42 Ga. 462 (4); Southwestern R. Co. v. Rowan, 43 Ga. 411; Bryan v. Southwestern R. Co., 41 Ga. 71.—Murphey v. Northeastern Const. Co., Ga., 121 S. E. 848.

51.——Guarantee.—Where 10-year guarantee of roofing was executed pursuant to provisions of contract, and constituted a part of the consideration whether executed contemporaneously with the contract or subsequently thereto, St. 1921, § 1684t-15 (4), relating to implied warranties as to fitness where an article is sold under a trade-name, did not apply, there being nothing implied about the guarantee.—Greenberg Realty Co. v. Cream City R. & P. Mfg. Co., Wis., 197 N. W. 815.

52.——Standard Warranty.—The scope of the "standard warranty" required of all automobile manufacturers by the National Automobile Chamber of Commerce, held sufficiently broad to preclude a recovery on an implied warranty.—Hummer v. Carmalt, U. S. C. C. A., 295 Fed. 978.

53. **Searches and Seizures**—Description of Premises.—Where only a portion of a residence was used as a store, a search of the whole premises under a warrant describing them as a store was as to the residence portion unreasonable and a violation of Const. Ill. art. 2, § 6.—People v. Castree, Ill., 143 N. E. 112.

54. **Street Railroads**—Rounding Corner.—The general rule is that a street railway company operating cars over the streets of a city is required to sound a gong or otherwise give notice to persons traveling theron at street crossings; it is also the duty of persons at such places of danger to use their own senses, and if a motorman in rounding a curve has kept a proper lookout and has safely passed one using the street at such point he may assume that such traveler will keep out of the way of the overhang of the car in rounding the curve, and he is not bound to stop the car or give further warning of the danger.—French v. Princeton Power Co., W. Va., 122 S. E. 171.

55. **Taxation**—Protest.—Where a tax is paid under protest at a time when such payment is necessary in order to avoid additional expense, it is not essential to a right of recovery that the protest should be in writing.—Salthouse v. Board of Com'rs, Kan., 224 Pac. 70.

56.——Tank Cars.—A tax for the year 1921 for municipal purposes levied on tank cars belonging to a Texas corporation qualified to do business in the state by the State Tax Commission under Act No. 9 of 1917 (Ex. Sess.) was valid, in view of Const. 1921, art. 10, § 16, providing that rolling stock operated in the state, the owners of which have no domicile therein, shall be assessed by the tax commission and taxed for state purposes only.—Simms Oil Co. v. Flanagan, La., 99 So. 450.

57. **Wills**—Final Arbiters.—Under a will whereby testator constituted his executors as the final arbiters of "any question of construction or meaning which should arise under his will or any question of right or of dispute as to how much any one is entitled to," the decision of the executors not to convert the property of the estate into money within a period of six years due to circumstances which made conversion within that time impracticable was final and binding on the legatees of the will.—Talladega College v. Callanan, Iowa, 197 N. W. 635.

58.——Heirs at Law.—Where will created trust for benefit of testator's daughter and directed trustees, on daughter's death, to give the trust estate to her children, or in case of her failure to levae any child or grandchild surviving her, "to my heirs at law," and devised the residue of the estate to such daughter, and her heirs and assigns, and where the testator's only heir at law at the time of his death was such daughter, the trust fund on such daughter's death without any child or grandchild surviving her passed to testator's heirs at law, exclusive of such daughter, and not to the daughter's estate, it being apparent that the words "heirs at law" did not refer to the daughter.—Gross v. Hartford-Connecticut Trust Co., Conn., 123 Atl. 907.

59. **Workmen's Compensation Act**—Accident.—A disease, such as typhoid fever, contracted in drinking water furnished by the employer is recognized as an "accident" within the Workmen's Compensation Act.—Ames v. Lake Independence Lumber Co., Mich., 197 N. W. 499.

60.——Hazardous Occupation.—A teamster employed in hauling by mule teams and wagons logs, timbers, boilers, engines, pumps, pipes and other machinery and material and appliances for the construction, operation, repair, maintenance, demolition and removal of oil and gas wells and derricks, held engaged in a "hazardous occupation" within Act No. 20 of 1914, as amended by Act No. 243 of 1916 and Act No. 38 of 1918, he being engaged in the removal of boilers, furnaces, engines, pipes and fixtures used in the construction, operation, etc., of oil and gas wells; the words in the statute "demolish" and "removal" not being synonymous, to demolish being to destroy, and to remove being to transfer from one place to another.—Durrett v. Woods, La., 99 So. 430.

61.——Hazardous Occupation.—One engaged in work on a stone crusher in a quarry is in a "hazardous occupation," under Or. L. § 6617, and section 6624, as amended by Laws 1921, p. 567, § 3.—Van Koten v. State Industrial Accident Commission, Ore., 223 Pac. 945.

62.——Jurisdiction.—A resident of Nebraska entered into a contract in this state with a Nebraska corporation, having its principal place of business in Omaha, to perform certain labor for the corporation in Iowa as its employee. While engaged in the allotted work in Iowa the employee incurred serious injuries. Held that under the Employers' Liability Act, the subsequent proceedings for compensation are maintainable in Nebraska.—McGuire v. Phelan-Shirley Co., Neb., 197 N. W. 615.

63.——Premises.—"Premises," as used in Workmen's Compensation Act (Act June 2, 1915, art. 3, § 301 [P. L. 736; Pa. St. 1920, § 21984]), embraces all property used in connection with the actual place of work, where the employer carries on the business in which the employee is engaged—Meucci v. Gallatin Coal Co., Pa., 123 Atl. 766.